

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BEATRIZ S.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2011020552

DECISION

The hearing in the above-captioned matter was held on July 7, 2011, before Janis S. Rovner, Administrative Law Judge, Office of Administrative Hearings. Claimant Beatriz S. was represented by her mother, Consuelo B. (Mother).¹ The Service Agency, South Central Los Angeles Regional Center (SCLARC, Regional Center or Service Agency) was represented by Johanna Arias Bhatia, Fair Hearing Coordinator.

Evidence was received, the case argued, and the matter was submitted for decision on July 7, 2011.

The Administrative Law Judge issues her factual findings, legal conclusions, and order, as follows:

ISSUE PRESENTED

May the Service Agency terminate funding for Independent Living Skills services?

¹ Initials are used in the place of family surnames in the interests of privacy.

FACTUAL FINDINGS

Jurisdiction and Background

1. Claimant is a twenty-three-year-old woman (born December 23, 1987) who is a consumer of services provided by the Service Agency pursuant to the Lanterman Developmental Disabilities Services Act (Lanterman Act), California Welfare and Institutions Code, section 4500 et seq.,² based on a diagnosis of autism.

2. On January 21, 2011, the Service Agency issued a Notice of Proposed Action (NOPA), which gave notice to claimant that it would terminate funding for 32 hours per month of Independent Living Skills (ILS) services then being provided by Solutions Plus, Inc. The effective date for terminating the services was to be on or about February 20, 2011. The stated reason for the action was that such services were a time-limited service, limited to two years, and that claimant had been receiving the services for five years, since August 15, 2006.

3. On or about February 15, 2011, claimant, through her mother, filed a Fair Hearing Request, contesting the Service Agency's decision to terminate the services. This hearing ensued. All jurisdictional requirements have been met.

Original Recommendation for ILS Services

4. On December 8, 2006, Roberto DeCandia, Ph.D., a clinical psychologist, conducted a psychological evaluation of claimant when she was 19 years old. (Ex. 5.) Dr. DeCandia observed that claimant was fully ambulatory and was very cooperative, pleasant and polite. She spoke clearly and was verbal. Her eye contact was inconsistent and she would often gaze down while responding to questions. She spoke using long and clear sentences, using English as her primary language. She knew her home address and telephone number and was aware of the date, month, year and day of the week. The results of the Vineland adaptive behavior scale suggested a communication age level of 10 years and 6 months, which was within the mild range of delay. At the same time, the results of the Wechsler Abbreviated Scale of Intelligence (WASI) estimated a vocabulary age level of 11 years and 10 months. Claimant was reading at a sixth grade level, spelling at a fifth grade level and her math level was at a fourth grade level. The WASI revealed that claimant's verbal, performance, and full scale scores fell within the borderline range of intelligence. In adaptive functioning, claimant presented with mild deficits in the communication, daily living skills, and socialization domains.

5. Dr. DeCandia observed that claimant could feed herself, use the toilet and complete all dressing. She needed help rinsing her hair well. She was able to choose

² All statutory references are to the Welfare and Institutions Code, unless otherwise noted.

clothing that was appropriate to the weather, and coordinated colors fairly well. At the time, claimant did not perform chores at home or make her bed unless prompted to do so. She also did not cooperate with cleaning the house and did very little. She was not employed and did not know how to handle money. At the time of the evaluation, she did not go out of the house very much, except with her mother. She did not drive and did not know how to use the bus by herself. Claimant reported that she did have friends at school and had a best friend in high school. She also enjoyed singing and continues to excel and perform as a singer, which makes claimant and her mother very proud.

6. Dr. DeCandia diagnosed claimant with autism in Axis I and with borderline intellectual functioning in Axis 2. He recommended that she continue to attend East Los Angeles Junior College. He also stated that claimant would benefit from receiving in-home independent living skills services in order to practice and increase her skills and level of independence. Finally, he felt that claimant would benefit from participating in a social recreational activity or similar program to help her make friends and socialize.

7. It was in August of 2006, after Dr. DeCandia recommended ILS services for claimant, that Regional Center began funding 32 hours per month of ILS services for claimant with Solutions Plus Services, Inc. (Solutions Plus).

2010 Individual Program Plan

8. According to Claimant's December 2010 Individual Program Plan (2010 IPP), she lives with her mother in a Huntington Park residence. Claimant has one sibling who lives in Germany and does not visit the family. Claimant is able to walk alone at least 20 feet with good balance. She uses fingers of both hands to manipulate objects. She takes her medications without reminders and has complete bowel and bladder control. She performs personal care activities independently, including dressing and bathing. She uses sentences of three words or more and has a vocabulary of more than 30 words. She initiates and maintains interactions in familiar and unfamiliar situations. She eats with at least one utensil, without spillage. She is able to focus on an activity for more than 30 minutes depending on her mood. She is bilingual in English and Spanish, but prefers to speak English. (Ex. 4, p. 7.) Claimant does not exhibit particularly challenging behaviors and her mother believes that claimant's medication helps to calm her behaviors.

9. Claimant attends East Los Angeles Community College in Monterey Park, taking math and English on Mondays and Wednesdays. She is able to do simple math and can read, but is not a proficient reader. Claimant's mother takes her to and from school two days per week.

10. Claimant enjoys singing and has participated in programs at the convention center and in hospitals. She has traveled to Mexico to sing, as well. By all accounts, she has a wonderful singing voice and her mother described her as having the "voice of an angel."

11. According to claimant's mother, she helps at home, mops the kitchen floor, washes dishes, does the laundry, and other chores in the house, when she is "in the mood."

12. The 2010 IPP acknowledged that claimant was receiving 32 monthly hours of ILS services. The service agency told claimant's mother that SCLARC had changed its policy on ILS services and claimant was no longer eligible for the services and they would be cancelled. Claimant's mother expressed a preference for the ILS services to continue.

Claimant's Progress with ILS Services

13. Beginning November 15, 2006, Solutions Plus prepared progress reports (usually quarterly) of claimant's independent living skills development focusing on four domains: mobility training, education (enrollment in school), social development, and community safety. Her goals were outlined as learning to access public transportation, learning to enroll in community college, participating in social activities within her community, and identifying emergencies and acquiring safety skills.

14. Up to and including Solutions Plus' most recent quarterly progress report dated May 15, 2010,³ claimant has made progress in accomplishing her independent living goals as outlined in the initial November 15, 2006, quarterly progress report. For example, the Solutions Plus assistant helped claimant access public transportation and become familiar with the bus routes so that she may one day use public transportation by herself. However, as of the most recent quarterly report, claimant was not using public transportation and her mother felt that she was not capable of doing so on her own without assistance. Claimant continues to enroll in the local community college with the Solutions Plus assistant and claimant attends two classes per week. The assistant helps as needed. Solutions Plus continues to work with claimant in learning how to respond to emergency situations and acquiring safety skills. Claimant has made progress in learning how to protect herself in emergencies, she has learned to call her mother for assistance and also knows to call 911 in urgent situations.

15. Claimant has also made progress in participating in social activities within her community. Sometimes going to the gym, the library, or shopping. She generally socializes well and has a friendly demeanor. The Solutions Plus assistance usually takes claimant out for social activities because claimant's mother does not feel comfortable letting claimant go on her own. Neither claimant nor her mother want claimant to move out of the house so that claimant can establish a separate residence.

16. Mother wants claimant to continue with her ILS services through Solutions Plus because it is helpful to claimant. She believes it is necessary for the Solutions Plus

³ The Solution Plus' quarterly progress reports, received in evidence as Exhibit 6, were dated November 15, 2006, March 15, 2007, June 15, 2007, September 17, 2007, December 15, 2007, March 15, 2008, March 15, 2009, June 15, 2009, January 11, 2010, and May 15, 2010. The evidence did not reveal why some of the quarterly reports were missing.

assistant to accompany claimant on most of her community outings to help her buy clothing, shop at the mall, and enjoy other community activities. Although claimant has made some progress over the five-year period she has received ILS services, she has not recently made marked improvement. At this point, the major benefit of her ILS services involves venturing into the community with her Solutions Plus assistant to help her. In addition, there is no plan for claimant to move out of the family residence.

Regional Center's Independent Living Support Services Policy

17. SCLARC's service policy for ILS (Ex. 7) notes that ILS is for adults whose goals may consist of either residing independently, or enhancing independent living skills while residing with their natural family. The program consists of a multi-tiered program including "comprehensive" and "maintenance" levels of service. "These services may be provided independently, or in combination with each other, based on the consumer's goals as identified in the IPP. These goals may consist of either residing independently in their own apartment, or enhancing independent living skills while residing with their natural family." [¶] . . . [¶] "Comprehensive ILS consists of services that assist individuals to target specific skills that will enable them to live independently or semi-independently." These services may include, among other services, use of transportation, cooking, shopping, and community resource awareness. "Maintenance services" provide support, reminders, encouragement and monitoring for individuals to perform at their fullest potential for independent living and provides maintenance for tasks that were learned in "comprehensive ILS."

18. Under SCLARC's service policy, comprehensive services are time limited and may not exceed one year and shall focus on specific objectives related to independent living. If after one year, no progress has been made towards independence, SCLARC may terminate funding of comprehensive services. In the alternative, it may be expected that after one year claimant, the vendor would transition the consumer out of any comprehensive services they may be receiving, and into a maintenance-only program. If the goal of the consumer was to continue living with the natural family, maintenance-only services would end after one year.

19. Here, claimant has already received almost five-years of ILS services. Although she could have been transitioned to maintenance services from the comprehensive services she was receiving, she had not sufficiently mastered the services that were being provided to justify a maintenance services program. Even so, the total time permitted for both comprehensive and maintenance services of two years had already elapsed. Further, claimant had no plans to move out of the family residence.

LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to section 4710 et seq., based on Factual Findings 1 through 3.

2. In enacting the Lanterman Act, the Legislature accepted its responsibility to provide for the needs of developmentally disabled individuals, and recognized that services and supports should be established to meet the needs and choices of each person with developmental disabilities. (§ 4501.)

3. Services are to be provided in conformity with the IPP, per section 4646, subdivision (d). The formulation of the IPP is a collaborative process with consumer choice to play a part in formulating the IPP. (See §§ 4512, subd. (b); 4646, subd. (a).) Where the parties can not agree on the terms and conditions of the IPP, a fair hearing decision may, in essence, establish such terms. (See § 4710.5, subd. (a).)

4. The services to be provided to any consumer must be individually suited to meet the unique needs of the individual client in question, and within the bounds of the law each client's particular needs must be met. (See, e.g., §§ 4500.5, subd. (d), 4501, 4502, 4502.1, 4640.7, subd. (a), 4646, subd. (a) & (b), 4648, subd. (a)(1) & (a)(2).) Otherwise, no IPP would have to be undertaken. A priority is assigned to maximizing the client's participation in the community. (§§ 4646.5, subd. (2); 4648, subd. (a)(1) & (a)(2).)

5. Section 4512, subdivision (b), of the Lanterman Act defines the services and supports that may be funded, and sets forth the process through which they are identified, namely, the IPP process, a collaborative process involving consumer and service agency representatives:

“Services and supports” for persons with developmental disabilities” means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer, or where appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan and the cost-effectiveness of each option”

6. The IPP is to be prepared jointly by the planning team, and services purchased or otherwise obtained by agreement between the regional center representative and the consumer or his or her parents or guardian. (§ 4646, subd. (d).) The planning team, which is to determine the content of the IPP and the services to be purchased in furtherance of it, is made up of the individual consumer, or their parents, guardian or representative, one or more regional center representatives, including the designated service coordinator, and any person, including service providers, invited by the consumer. (§ 4512, subd. (j).)

7. In this instance, the planning team—the Service Agency through its service coordinator and claimant and her mother—using the prescribed IPP process, previously determined that ILS training was an appropriate service.

8. California Code of Regulations, title 17, section 54302, subdivision (a) (35) provides as follows: “‘Independent Living Program’ means a community-based day program that provides to adult consumers the functional skills training necessary to secure a self-sustaining, independent living situation in the community and/or may provide the support necessary to maintain those skills. Independent living programs focus on functional skills training for adult consumers who generally have acquired basic self-help skills and who, because of their physical disabilities, do not possess basic self-help skills, but who employ and supervise aides to assist them in meeting their personal needs . . .” Although there is no mention in this definition of time-limited services, the Service Agency’s purchase of services policy treats the services in question as time-limited. Although the purchase of service policy does not have the same binding force as do regulations or statutes under the Lanterman Act, it should not be ignored and deserves a level of deference. The limitation on ILS services has a tendency to assure cost-effectiveness. (Factual Findings 17 and 18.)

9. In this case claimant has made some progress in acquiring independent living skills, but almost five years have passed since the SCLARC began funding the independent living skills. Her progress has not been significant recently, and she has no intention of moving out of the home and residing independently. (Factual Findings 16 and 19.) In the event that claimant does wish to move out of the family home, she can again seek regional center funding of independent living skills services. At this time, it would not be cost effective to continue the ILS services.

10. At hearing, SCLARC’s representative mentioned several possible alternatives that could help claimant ameliorate the loss of some of her ILS services. SCLARC mentioned that claimant may qualify to receive funding for a personal assistant or a community-based day program that would assist her with socializing and functioning in the community. SCLARC mentioned other possibilities for claimant as well. Claimant and her mother are encouraged to meet with regional center promptly to explore alternatives that may be available to assist claimant in increasing her skills, and maintaining the skills she has already mastered.

ORDER

The Claimant's appeal is denied, and the Service Agency's action is upheld. Therefore, it may terminate funding for ILS services.

DATED: _____

JANIS S. ROVNER
Administrative Law Judge
Office of Administrative Hearings

NOTICE

THIS IS A FINAL ADMINISTRATIVE DECISION. BOTH PARTIES ARE BOUND BY THE DECISION AND EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITHIN NINETY DAYS.